

All sales by retail establishments that provide facilities for on-premises consumption of food are subject to the high rate of tax unless the establishments utilize separate means of collection and physically partition the areas in which food not for immediate consumption is sold. See 86 Ill. Adm. Code 130.310(b)(2)(A). (This is a GIL).

May 9, 2001

Dear Xxxxx:

This letter is in response to your letter dated March 7, 2001 that we received in our office on April 3, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are writing you to request a Letter Ruling on the taxability of the enclosed products. Please read the below information for information on our company.

We are an out-of-state seller into your state and do hold a valid sales or use tax account with your state. All orders are originated out-of-state and are shipped via common carrier to our customers in your state.

Also, please provide criteria for your decision. This will aid us in determining the taxability of new products as they are introduced. You can direct any questions you have to the below address and phone number. Thank you for your assistance in this matter.

We have enclosed a copy of 86 Ill. Adm. Code 130.310, "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sales of food can be subject to either low (1%) or high (6.25%) rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made. If a registered Illinois seller accepts a purchase order out-of-State and the property being sold is located out-of-State at the time of sale, then the seller would be required to collect Illinois Use Tax at either the low (1%) or high (6.25%) rates upon delivery of the property to its Illinois customer.

All sales by retail establishments that provide facilities for on-premises consumption of food are subject to the high rate of tax unless the establishments utilize separate means of collection and physically partition the areas in which food not for immediate consumption is sold, 86 Ill. Adm. Code 130.310(b)(2)(A).

If businesses do not provide facilities for on-site consumption, they must charge the high rate on all food sales if a majority of their gross receipts from food sales is for items sold in a state of preparation for immediate consumption (prepared by the retailer so as to be eaten without substantial delay after the final act of preparation) and would charge the low rate on all food sales (except for hot foods, foods prepared by the retailer for immediate consumption, soft drinks and alcoholic beverages) if a majority of their gross receipts from food sales is for items sold in bulk.

As a general proposition, the Department considers dietary supplements to fall within the definition of food. As a result, the appropriate tax rate for such items is determined in accordance with the above enumerated principles. However, if vitamins, dietary supplements or health food supplements are intended by the manufacturer for human use and purport on the label to have medicinal qualities, then such items may be considered a drug and taxed at the lower rate.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.